



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1996

Ms. Kari A. Hernandez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR96-0241

Dear Ms. Hernandez:

You have asked this office to determine if certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38559.

The City of El Paso (the "city") received a request for a copy of a tape recording of a 911 telephone call. You contend that the requested information is excepted from disclosure under the informer's privilege aspect of section 552.101 of the Government Code. You submitted for our review a copy of the tape recording, as well as a written transcript of the call.

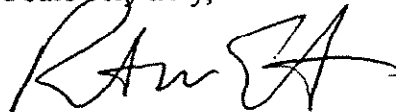
Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act. Open Records Decision No. 549 (1990) at 4. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 (1988) at 2-5, 391 (1983). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision Nos. 549 (1990) at 5. Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 (1978) at 2.

You assert that the information that was provided in the 911 telephone call indicated a potential violation of state law, including section 22.05 of the Penal Code. Accordingly, you may withhold information that would tend to reveal the identity of the informer. We agree with your assertion that release of the tape recording, which contains the voice of the informant, would tend to reveal the identity of the informant. Thus, you may withhold from disclosure the tape recording of the 911 telephone call. It is unclear

from the open records request you submitted whether the requestor seeks a copy of the transcript of telephone call. We do not believe, however, that release of the transcript will identify the informant. Thus, if the requestor seeks a copy of the transcript, you may not withhold this document from public disclosure under the informer's privilege and section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS', followed by a large, stylized capital 'A'.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/ch

Ref.: ID# 38559

Enclosures: Submitted documents

cc: Ms. Irene Sanchez
Innerpac Southwest, Inc.
58 Founders Blvd.
El Paso, Texas 79906
(w/o enclosures)